

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
)
(Chillicothe, Dublin,)
Hillsboro, and Marion, Ohio))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 02-266
RM-10557

To: Media Bureau (Audio Division)

COMMENTS IN OPPOSITION

Sandyworld, Inc. ("Sandyworld"), by its attorney, respectfully submits these comments in opposition to the Commission's Notice of Proposed Rule Making, DA 02-2100, released August 30, 2002 ("NPRM"). In support thereof, the following is shown.

Sandyworld is the licensee of FM translator W294AH, Columbus, Ohio. Implementation of the changes proposed in the NPRM would result in W294AH causing interference to WMRN-FM, and thus having to go silent. There **is** no self-precluding channel for W294AH to move to. It cannot file an application for another channel, should one even be available, until the opening of a new filing window, and there is no assurance that any application it might file would be granted. Hence, W249AH would have to cease operation, and its many listeners be deprived of its service, should the Commission's proposals be adopted. Accordingly, Sandyworld has standing to participate in this proceeding.

On October 18, 2002, Sandyworld, having just become aware of the NPRM, requested additional time in which to prepare comprehen-

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sive comments.' It is filing these comments this day out of an abundance of caution, as it does not know whether its request will be granted. However, Sandyworld intends to supplement its showing with additional material so as to provide the Commission with all of the information necessary to make a decision which comports with the public interest, convenience and necessity.

Citicasters Licenses, Inc., and Citicasters Company (hereinafter "petitioners") seek a number of changes to the Commission's FM Table of Allotments for the purpose of moving Station WMRN-FM to the Columbus, Ohio, metropolitan area. To accomplish this, WMRN-FM would downgrade from Class B to a Class B1, and move approximately 40 miles from Marion, Ohio, to Dublin, Ohio. In addition, WSRW-FM will have to downgrade from Channel 294B to Channel 293A, and move from Hillsboro, Ohio, to Chillicothe, Ohio. It is respectfully submitted that these changes are not warranted under Commission policies.

The sole alleged public interest benefit from the proposal is the establishment of a first local transmission service at Dublin.' There will be significant loss of service to the present listeners of both WMRN-FM and WSRW-FM, and both stations will cover less area as a result of their downgrades. The issue to be resolved is whether establishment of a first local service at Dublin overcomes

¹ See the attached Declaration under penalty of perjury of Kurt Tuckerman, Sandyworld's president.

² A TIS AM station has been providing local governmental news, school news, and emergency information for Dublin for at least 10 years.

the loss of FM stations at Marion and Hillsboro and the loss of service to the present listeners of WMRN-FM and WSRW-FM. The Commission should also consider the loss of service to the hundreds of thousands of people residing within the service area of W294AH.

As the NPRM notes, WMRN-FM will place a 70 dBu signal over 71% of the Columbus, Ohio, Urbanized area. Therefore, the Commission must determine whether Dublin is sufficiently separate from Columbus to warrant a preference for a first local service, pursuant to Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). The Commission has previously looked askance at proposals to move FM stations from rural areas to metropolitan area, where there will become just one more station directed to the large city. See, e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama), 6 FCC Rcd 6580 (MMB 1991)

The facts clearly demonstrate that Dublin is merely one community making up the greater Columbus area. It is located inside Route 1-270, a circumferential highway similar to the Washington Beltway. Petitioners cited 1990 figures which indicate that less than one-quarter of Dublin residents work in that community, a figure significantly less than the 35.1% who worked in Richmond, California, which was found to be part of the San Francisco metropolitan area in RKO General, Inc. (KFRC), 5 FCC Rcd 3222 (1990). The Census also reported that approximately 50% of Dublin residents who work, work in Columbus, and another 21 per cent work elsewhere in the Columbus MSA. Of the total number of jobs located

in Dublin, only 28 percent were filled by Dublin residents.

Since 1990, Dublin has become even more of an upscale bedroom suburb of Columbus. Most of its jobs are in the service industries, which are unattractive to its residents. They offer low wages, and such workers cannot afford to live in Dublin where housing is expensive.³ Many Dublin workers are Columbus residents who are bussed in to perform the jobs which Dublin residents refuse.

Dublin is not geographically separate from the greater Columbus area. Its borders are contiguous with surrounding communities. 1-270, the main route between Columbus and Dublin, is regularly congested with traffic heading into Columbus in the morning and returning to Dublin in the evening. The traffic generally comes to a standstill at the two main Dublin exits from 1-270, US 33 and Sawmill Road. The Commission should obtain current information on the number of Dublin residents who work there as compared with the number who work in Columbus and other parts of the metropolitan area before making a decision in this proceeding.

Petitioners have provided misleading information regarding Dublin in their petition for rulemaking. While there are "newspapers" published in Dublin, for the most part they are merely advertising vehicles. Dublin's library is not "governed independently" as petitioners asserted. It is merely a branch of the Franklin County Library System. Similarly, Washington Township

³ Dublin Plaza, a new shopping center with frontage on State Route 161/Dublin-Granville Road, advertises that it is located in a high income area with over 31% of households in its primary trade market earning more than \$75,000 per year.

provides Dublin with fire protection service, not the city of Dublin. Also, many of the churches and sports activities listed by petitioners as located in Dublin are, in fact, outside of the city.

Petitioners have misstated Dublin's postal codes. One of the zip codes that the petitions state as belonging to Dublin, **43064**, is actually the Zip Code of the Plain City, Ohio, post office, covering the rural area surrounding Plain City, a separate community. Mr. Tuckerman states that he was employed as the rural carrier for the portion of the **43064** Zip Code that bordered Dublin, and had only **4** customers actually within the boundary of Dublin.

According to petitioners, the mayor of Dublin states that its residents perceive their city as being separate from Columbus. There is no doubt that Dublin is a separate community, with its own city government. It qualifies as a community for allotment purposes. However, that fact does not necessarily mean that Dublin merits a preference for first local service. See, e.g., Beacon Broadcasting, 2 FCC Rcd 7562 (1987) and Women's Broadcasting Coalition, Inc., 59 RR 2d 730 (1986). TO sustain such a preference, petitioners bear the burden of proving that Dublin is independent of the Columbus metropolitan area.

Among other facts demonstrating Dublin's dependence on the Columbus urbanized area are the absence of a hospital within its borders, and reliance by Dublin residents on the Columbus bus system for public transportation. Dublin lacks its own telephone directory. An internet search of "Dublin, OH/Suburb" using the

"Google" search engine reveals close to 3,000 entries identifying Dublin, Ohio, as a suburb of Columbus.

In addition to finding that Dublin does not merit a first local service preference, the Commission must consider the effect of the loss of service which would result from the proposed station moves. Petitioners bear the burden of showing that no underserved area will be created by the proposed changes. Figure 4 of the Petitioner's Technical Exhibits, Service to **WMRN-FM** 60 dbu loss area is so sketchy that it is not possible to derive any useful information from it. The scale is so large (140km x 240km) that it fails to provide any information regarding the current coverage of the Marion area, including the location of Marion itself! If the large circle centered on the page is indeed **WMRN's** existing 60 dbu loss area, there appear to be a few areas of this loss area that would not be covered by any remaining service. Creating underserved area, area where there are fewer than five reception services, is not permitted, absent stronger public interest benefits. Here, such benefits are not present.

Similarly, the scale (140km x 180km) of Figure 7 of the Petitioner's Technical Exhibits, Services to **WSRW-FM** 60 dbu loss area, is so large that useful information cannot be derived from it. It fails to provide any information regarding the actual coverage of the Hillsboro area, including the location of Hillsboro itself! If the large circle centered on the page is indeed **WSRW's** existing 60 dbu loss area, there appear to be a few areas of this loss contour that would not be covered by any remaining service.

The proposed move of WSRW-FM would leave Hillsboro with only a daytime-only AM station. While the Commission considers daytime-only stations as providing a local transmission service, it must be recognized that Hillsboro will be left without local service, and thus without access to emergency, real time, broadcast information after sunset each day. Moreover, the public interest is not served by adding a third commercial FM station to Chillicothe, which also has two AM stations and three non-commercial FM stations, at Hillsboro's expense.

Before adopting the proposal, the Commission must ensure that no underserved area will result from the proposed changes to WMRN-FM and WSRW-FM, and that the loss of service to the many listeners who have come to rely on these two stations is warranted by a greater good. Petitioners' showing has failed to provide the Commission with the information necessary to adopt their proposals.

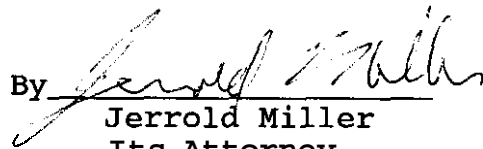
The proposals before the Commission would move another station into the Columbus metropolitan area at the expense of Hillsboro and Marion, two rural communities.⁴ They would downgrade two wide-area services, one becoming a Class A facility, depriving many people of a valued service on which they have come to rely. On balance, the public interest would be served by maintaining the stations at their present locations, without disrupting existing service.

⁴ Moreover, as Columbus would be deprived of W294AH, there would be no net gain in service to a significant part of Columbus.

Accordingly, the Commission should deny the proposals identified in the instant proceeding and should retain the status quo.

Respectfully Submitted,

SANDYWORLD, INC.

By 
Jerrold Miller
Its Attorney

October 21, 2002

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

DECLARATION

I am Kurt Tuckerman, president of Sandyworld, Inc., the licensee of FM Translator W294AH, Columbus, OH. I have been Chief Engineer at the IBB Tinian Relay Station for the past 18 months, and currently am assigned to the Office of Cuba Broadcasting's Radio Marti Site. Because of the remote nature of my overseas assignment, I was unaware of Citicasters' Petition or the FCC NPRM in Docket 02-266 until approximately October 16, 2002, leaving little time for a comprehensive comment on either document before the October 21, 2002, comment deadline. As my translator would be impacted by this proceeding, I believe I should have been informed of it by the Petitioners, and not merely by happenstance. These time limitations have prevented me from having appropriate time to consult adequately with a broadcast attorney, and to research fully my objections to the Petition and NPRM. I have asked for additional time to prepare full comments on Citicasters' proposals, but am submitting what I am able to at this time.

Operation of W294AH would have to be discontinued if this Proposed Rulemaking was adopted because of interference to WMRN-FM. I have commissioned Clarence Beverage of Communications Technologies to perform a study of the possibility of changing the channel of W294AH, plus or minus 3 channels, constituting a minor change under current Commission Policy, the only remedial action available at this time. This study was performed using the proposed coordinates and station Class information provided in Citicasters' petition. It is readily apparent that changing channels is not an option, and W294AH would have to discontinue operation if Citicasters prevails.

I realize that the loss of a secondary service to the approximately 350,000 persons within the .05mV/m contour of W294AH cannot be a sole

consideration in this proceeding, and neither can the incredible expense I incurred disproving Citicasters' endless Petitions to Deny my construction permit application, all of which the Commission decided had no merit. However, I request the Commission to please consider the attached comments on the current proposal.

I note that petitioners concede that 24.38 of Dublin residents work in Dublin, and that was old data from a 1990 Census. The actual number of local workers in Dublin would be much less today, as Dublin is an upscale community where even the local young people refuse to work in the service industries and restaurants, and the working poor from Columbus by necessity are bused in to do these jobs. My wife worked at OCLC, one of the local employers listed by the petitioner, until about 1996, and very few of her co-workers could afford to live in Dublin even back then. It has gotten even more expensive today. Twenty years ago, Dublin was a crossroads where cornfields were being turned into subdivisions. Today, it is a fully populated upscale section of a suburban area, whose borders are contiguous with surrounding communities. There is no rural area geographically isolating Dublin from the rest of the Greater Columbus area. I personally drove through Dublin nearly every day for 8 years, until 1996, on my way to various transmitter sites in Columbus from my home in Plain City, OH. It would take one hour to drive the 20 miles to downtown on I-270, surrounded by the mass exodus of Dublin residents all headed to Columbus in the morning, and back to Dublin at night. The traffic standstill surrounds the US 33 and Sawmill Rd. exits off of I-270, the 2 main Dublin exits.

Since then traffic has gotten worse. According to the August 29, 2000 edition of the Cincinnati Enquirer, a spokesman from the Ohio Department of Transportation stated that more than 41,000 cars a day use

the Interstate 270/Sawmill Road interchange.

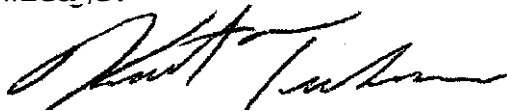
With respect to Postal Zip Codes, I was employed as the rural carrier for the area of the 43064 Zip code that bordered Dublin. I only had 4 customers actually within the boundary of Dublin, OH. The other Zip codes may be only fractionally contained within Dublin as well.

The Petitioners state that "Dublin's school and library systems are governed independently," and they proceed to describe in detail the Library's merits. This is untrue. The only Public Library is the Dublin branch of the Franklin County Library System, which would certainly not be "governed independently" by Dublin, and neither is it a City of Dublin facility. Dublin has Washington Township fire protection, not *local*.

Other results of the proposals are that Hillsboro, OH loses a long-standing station with a huge coverage area. to be massively downgraded and moved to Chillicothe, an area already well served. Hillsboro is left with an *AM* daytimer.

Columbus, OH loses an existing Translator, providing programming to hundreds of thousands of people at the urban core where blanketing interference and intermodulation interference from local stations have blocked many interesting out-of-town formats from being heard.

I certify under penalty of perjury that the foregoing statement is true to the best of my knowledge.



Date October 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2002, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Mark N. Lipp
Shook Hardy & Bacon L.L.P
600 14th Street, NW
Suite 800
Washington, DC 20005-2004

Nadyne Cheary